

§ 4.273

and conducted in accordance with the rules of this subpart. The administrative law judge or Indian probate judge will enter a final decision based on his or her findings, modifying or refusing to modify the property inventory. His or her decision will become final at the end of 60 days from the date it is mailed, unless an aggrieved party files a notice of appeal within such period. Notice of entry of the decision must be given in accordance with § 4.240(b).

(d) A party aggrieved by the deciding official's decision may appeal to the Board under §§ 4.310 through 4.323.

(e) The record of all proceedings must be lodged with the designated LTRO under § 4.236(b).

§ 4.273 Distribution of estates.

(a) The Superintendent must initiate payment of allowed claims, distribution of the estate, and all other actions required by the deciding official's final order 75 days after a final order has been issued, unless he or she has received:

(1) A copy of a request for de novo review filed under § 4.215;

(2) A copy of a petition for rehearing filed under § 4.241(a); or

(3) A copy of a notice of appeal filed under § 4.320(b).

(b) The Superintendent must not initiate the payment of claims or distribution of the estate during the pendency of proceedings under §§ 4.215, 4.241, or 4.242, unless the administrative law judge or Indian probate judge orders otherwise in writing. The Board may, at any time, authorize the administrative law judge or Indian probate judge to issue interim orders for payment of claims or for partial distribution during the pendency of proceedings on appeal.

MISCELLANEOUS

SOURCE: 70 FR 11823, Mar. 9, 2005, unless otherwise noted.

§ 4.281 Claims for attorney fees.

(a) The deciding official may allow fees for attorneys representing Indians in proceedings under this part.

(1) At the discretion of the deciding official, these fees may be chargeable against the interests of the party rep-

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resented or may be taxed as a cost of administration.

(2) Petitions for allowance of fees must be filed before the close of the last hearing and must be supported by whatever proof the deciding official requires.

(3) In determining attorney fees, consideration must be given to the fact that the property of the decedent is restricted or held in trust and that it is the duty of the Department to protect the rights of all interested parties.

(b) Nothing in this section prevents an attorney from petitioning for additional fees to be considered at the disposition of a petition for rehearing and again after an appeal on the merits. An order allowing attorney fees is subject to a petition for rehearing and to an appeal.

§ 4.282 Guardians for incompetents.

Minors and other legal incompetents who are interested parties must be represented at all hearings by legally appointed guardians, or by guardians ad litem appointed by the deciding official.

TRIBAL PURCHASE OF INTERESTS UNDER SPECIAL STATUTES

SOURCE: 70 FR 11823, Mar. 9, 2005, unless otherwise noted.

§ 4.300 Authority and scope.

(a) Sections 4.300 through 4.308 apply to formal proceedings in Indian probate that relate to the tribal purchase of a decedent's interests in the trust and restricted land shown in the following table.

Location of trust or restricted land	Legislation governing purchase
(1) Yakima Reservation or within the area ceded by the Treaty of June 9, 1855 (12 Stat. 1951).	The Act of December 31, 1970 (Pub. L. 91-627; 84 Stat. 1874; 25 U.S.C. 607 (1976)), amending section 7 of the Act of August 9, 1946 (60 Stat. 968).
(2) Warm Springs Reservation or within the area ceded by the Treaty of June 25, 1855 (12 Stat. 37).	The Act of August 10, 1972 (Pub. L. 92-377; 86 Stat. 530).
(3) Nez Perce Indian Reservation or within the area ceded by the Treaty of June 11, 1855 (12 Stat. 957).	The Act of September 29, 1972 (Pub. L. 92-443; 86 Stat. 744).

(b) In the exercise of probate authority, an administrative law judge or Indian probate judge will determine—

(1) The entitlement of a tribe to purchase a decedent's interests in trust or restricted land under the statutes;

(2) The entitlement of a surviving spouse to reserve a life estate in one-half of the surviving spouse's interests that have been purchased by a tribe; and

(3) The fair market value of such interests, including the value of any life estate reserved by a surviving spouse.

(c) In making a determination under paragraph (b)(1) of this section, the following issues will be determined by the official tribal roll, which is binding upon the administrative law judge or Indian probate judge:

(1) Enrollment or refusal of the tribe to enroll a specific individual; and

(2) Specification of blood quantum, where pertinent.

(d) For good cause shown, the administrative law judge or Indian probate judge may stay the probate proceeding to permit an aggrieved party to pursue an enrollment application, grievance, or appeal through the established procedures applicable to the tribe.

§ 4.301 Valuation report.

(a) In all probates, at the earliest possible stage of the proceeding before issuance of a probate decision, BIA must furnish a valuation of the decedent's interests when the record reveals to the Superintendent:

(1) That the decedent owned interests in land located on one or more of the reservations designated in § 4.300; and

(2) That one or more of the probable heirs or beneficiaries who may receive the interests either:

(i) Is not enrolled in the tribe of the reservation where the land is located; or

(ii) Does not have the required blood quantum in the tribe to hold the interests against a claim made by the tribe.

(b) If there is a surviving spouse whose interests may be subject to the tribal option, the valuation must include the value of a life estate based on the life of the surviving spouse in one-half of such interests. The valuation must be made on the basis of the fair market value of the property, includ-

ing fixed improvements, as of the date of decedent's death.

(c) BIA must include the valuation report in the probate package submitted to OHA. Interested parties may examine and copy, at their expense, the valuation report at the office of the Superintendent or the administrative law judge or Indian probate judge.

§ 4.302 Conclusion of probate and tribal exercise of statutory option.

(a) *Conclusion of probate; findings in the probate decision.* (1) When a decedent is shown to have owned land interests in any one or more of the reservations designated in § 4.300, the probate proceeding relative to the determination of heirs, approval or disapproval of a will, and the claims of creditors will first be concluded as final for the Department in accordance with §§ 4.216 through 4.282 and §§ 4.310 through 4.323. This decision is referred to in this section as the "probate decision."

(2) At the formal probate hearing, a finding must be made on the record showing those interests in land, if any, that are subject to the tribal option.

(i) The finding must be included in the probate decision setting forth the apparent rights of the tribe as against affected heirs or beneficiaries and the right of a surviving spouse whose interests are subject to the tribal option to reserve a life estate in one-half of such interests.

(ii) If the finding is that there are no interests subject to the tribal option, the decision must so state.

(iii) A copy of the probate decision, to which must be attached a copy of the valuation report, must be distributed to all interested parties in accordance with § 4.240.

(b) *Tribal exercise of statutory option.*

(1) A tribe may purchase all or a part of the available interests specified in the probate decision within 60 days of the probate decision unless a petition for rehearing or a demand for hearing has been filed under §§ 4.304 or 4.305.

(2) If a petition for rehearing or a demand for hearing has been filed, a tribe may purchase all or a part of the available interests specified in the probate decision within 20 days from the date of the decision on rehearing or hearing, whichever is applicable. A tribe may